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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,555	02/27/2004	Peter G. Knopp	9065.ALG.P	7054

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MINNEAPOLIS, MN 55403

EXAMINER

STOKES, CANDICE CAPRI

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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08/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/788,555

Applicant(s)

KNOPP, PETER G.

Examiner

Candice C. Stokes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-14, 16-21, 23 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-14 and 16-21 is/are rejected.
- 7) ☒ Claim(s) 23, 25-28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2,4-6,14,16-17 and 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Chishti et al (US 2005/0244782). Chishti et al disclose a method for moving teeth, comprising: moving a first tooth; and moving a second tooth while isolating the first tooth at a rest position. As to claim 2, Chishti et al disclose the second tooth is moved for a first duration and immobilized for a second duration. Regarding claim 4, the method as disclosed further comprises generating a plurality of appliances based on the moving of the tooth, wherein the appliances comprise polymeric shells having cavities and wherein the cavities of successive shells have different geometries shaped to receive and resiliently reposition the teeth from one arrangement to a successive arrangement. As to claim 5, a first cavity isolates the first tooth at the rest position. To claim 6, a second cavity urges the second tooth to one of the successive position. Specifically Chishti et al disclose, “according to the present invention, systems and methods are provided for incrementally moving teeth using a plurality of discrete appliances, where each appliance successively moves one or more of the patient’s teeth by relatively small amounts” (paragraph [0053]). Chishti et al also disclose “a preferred appliance 111 will comprise a polymeric shell having a cavity shaped to receive and resiliently reposition teeth from

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one tooth arrangement. The polymeric shell will preferably, but not necessarily, fit over all teeth present in the upper or lower jaw. Often, only certain one(s) of the teeth will be repositioned while others of the teeth will provide a base or anchor region for holding the repositioning appliance in place as it applies the resilient repositioning force against the tooth or teeth to be repositioned" (paragraph [0055]). This also anticipates claims 14,16-17 and 20. This also reads on amended claims 1 and 21 because the tooth that's not being repositioned is the tooth that is being isolated by not applying the repositioning force. As to claim 19, Chishti et al disclose "the polymeric appliance 111 of Fig. 1C is preferably formed from a thin sheet of a suitable elastomeric polymeric material" (paragraph [0056]). Regarding claim 21, Chishti et al further disclose a system for generating one or more appliances for a patient includes a processor (302); a display device (318 see paragraphs [0121] & [0123]) coupled to the processor (302); a data storage device (314) coupled to the processor (302); a scanner (320) coupled to the processor for providing data to model the patient's masticatory system; means for moving a first tooth; means for moving a second tooth while isolating the first tooth at a rest position; and a dental appliance fabrication machine (322) coupled to the processor (302) for generating the appliances in accordance with the moved tooth and the isolated tooth.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 8-12, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chishti et al. Chishti et al disclose the claimed invention except for duration being the periods of time as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate any duration of time between moving teeth whether it is weekly, monthly, daily, etc. in order to provide a variation of implemented treatment schedules as suitable to each individual patient.

Allowable Subject Matter

Claims 23 and 25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 05/25/07 have been fully considered but they are not persuasive. Applicant's submit "Chishti does not appear to teach a method for moving teeth including moving at least on first tooth and moving at least one second tooth while isolating the first tooth at a rest position, isolating the first tooth by relieving the first tooth of any applied

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force, as provided in claim 1” (see Remarks on page 6, paragraph 5). However as state in this and the previous rejection “Often, only certain one(s) of the teeth will be repositioned while others of the teeth will provide a base or anchor region for holding the repositioning appliance in place as it applies the resilient repositioning force against the tooth or teeth to be repositioned” (paragraph [0055]). This clearly shows that the invention as claimed is anticipated by the prior art of record. Accordingly, claims 1-6,8-14, and 16-21 remain rejected.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached on 8:00am - 4:30pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Candice C. Stokes



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